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OUR FILE NO. 365652-1

February 5, 2008
FILED VIA ECF

Honorable Noel L. Hillman
United States District Court, District of New Jersey
Mitchell H. Cohen U.S. Courthouse, Room 6020
1 John F. Gerry Plaza
Camden, NJ 08101

Re: MDL-1850 – *In re Pet Food Products Liability Litigation*
Objection filed by Donald R. Earl to the Order dated December 18, 2007

Dear Judge Hillman:

We are counsel to Menu Foods, Inc. This letter responds to the "Objection to Pet Food Evidence Disposal Plan Approved on December 18, 2007" (the "Objection") filed by Donald R. Earl in this MDL proceeding on January 30, 2008. As set forth below, we ask the Court to reject Mr. Earl's purported objection because Mr. Earl is neither a putative class member, nor does he have standing to raise objections in the MDL proceeding. Rather, Mr. Earl has filed a case against Menu Foods in Washington State Court and should use that forum to address any concerns he may have with the Court's Order dated December 18, 2007, or preservation issues in general.

By way of background, Mr. Earl has filed an action in the Superior Court of Washington State for Jefferson County *pro se*, styled *Donald R. Earl v. Menu Foods, Inc. et al [sic] The Kroger Company*, Case No. 07-2-00250-1 (the "Washington State Action"). Mr. Earl's case has been dismissed twice and currently is on appeal. As Mr. Earl acknowledges, he "is not a putative member of the class of plaintiffs, as defined by the Judicial Panel's order of June 19, 2007" establishing *In re Pet Food Products Liability Litig.* in this Court. Objection at 3. In his Washington State Action, Mr. Earl alleges that the pet food that injured his pet was not subject to the recall at issue in this proceeding.

Following the entry of this Court's December 18, 2007, Order on the retention of recalled pet food and wheat gluten, Menu Foods sought the approval of a similar order in each state court action in which it is a defendant. Although the December 18, 2007, Order gave Menu Foods permission to destroy unorganized inventory immediately, Menu Foods has not done so in order to obtain the consent of the plaintiffs in those state court actions or, if consent was withheld, to file a motion to obtain similar relief.

Notwithstanding that his case and claims are not related to the MDL, Menu Foods voluntarily sought Mr. Earl's consent to the December 18, 2007, Order. Mr. Earl refused this

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consent and, on January 25, 2008, Menu Foods filed a Motion to Limit the Retention of Organized Recalled Product, Raw Wheat Gluten and Unorganized Inventory (the "Washington State Preservation Motion") in the Washington State Action. A copy of the Washington State Preservation Motion is attached.[1] Rather than respond in his own case, Mr. Earl filed the Objection in the MDL action.[2]

As set forth herein, Mr. Earl is not a putative class member with standing to raise objections to this Court's December 18, 2007, Order. *Cf.* Fed. R. Civ. P. 23(e) (providing that class members have standing to object to settlement of a class action). Mr. Earl should not be permitted to interfere with this Court's approval of the parties' agreement in the MDL as to the retention of recalled pet food and wheat gluten and the sampling plan related to it. The forum for Mr. Earl to raise his objection is his Washington State Action, where Menu Foods filed the Washington State Preservation Motion and the appeal of his dismissed case is pending.

We therefore respectfully request that this Court reject Mr. Earl's Objection.

Respectfully submitted,

Amy W. Schulman

AWS:th
Enclosures

cc: Donald R. Earl

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1 As shown by Menu Foods' attached Washington State Preservation Motion, Mr. Earl's Objection lacks merit. Menu Foods does not address the merits of Mr. Earl's Objection because of the threshold issue raised in this letter, namely that Mr. Earl lacks standing as a non-class member and the proper forum for his Objection is in his Washington State Action. Menu Foods reserves the right to address the merits of Mr. Earl's Objection should the Court request such briefing.

2 Because Mr. Earl's complaint has been dismissed twice and currently is on appeal, Menu Foods is filing an emergency motion tomorrow in the Court of Appeals for the State of Washington to permit the lower court to rule on Menu Foods' motion related to the retention of the recalled pet food. Mr. Earl then will have an opportunity to raise the issues in this Objection in the proper forum, his own case.